(2) Supreme Court, U.S.
FILED

No. 041241 MAR 11 2005

OFFICE OF THE CLERK

In The
Supreme Court of the United States

Silver Spur Reserve, a California General Partnership, dba Silver Spur Mobile Manor
Petitioner and Appellant,

v.

The City of Palm Desert and the Palm Desert Rent Review Board,
Respondents and Appellees.

The Tenants Residing at Silver Spur Mobile Manor
Real Parties in Interest.

On Petition for Writ of Certiorari to the California Supreme Court

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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*Counsel of Record

Court of Appeal, Fourth Appellate District, Division Two - No. E034854

S129035

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SILVER SPUR RESERVE, Plaintiff and Appellant,

v.

CITY OF PALM DESERT, et al., Defendants and Respondents;

TENANTS RESIDING AT SILVER SPUR MOBILEHOME PARK et al., Real Parties in Interest

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Petition for review DENIED.

Supreme Court
Filed
DEC 15, 2004
Frederick K. Ohlrich Clerk

Deputy

GEORGE
Chief Justice

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Filed
SEP 20, 2004
Court of Appeal - Fourth District

SILVER SPUR RESERVE, Plaintiff and Appellant, v. CITY OF PALM DESERT, et al., Defendants and Respondents.	E034854 (Super Ct. No. RIC 390013) OPINION
THE TENANTS RESIDING AT SILVER SPUR MOBILEHOME PARK et al., Real Parties in Interest and Respondents.	

APPEAL from the Superior Court of Riverside County. Robert S. Drake, Judge. (Retired Judge of the Mun. Ct. Big Bear for the San Bernardino Jud. Dist. assigned by the

Chief Justice pursuant to art. VI, Section 6 of the Cal. Const.)

Affirmed.

Law Office of Anthony Rodriguez and Anthony C. Rodriguez for Plaintiff and Appellant.

Best, Best & Krieger and Douglas S. Phillips for Defendants and Respondents.

No appearance for Real Parties in Interest.

Following lengthy administrative proceedings, Silver Spur Reserve (Silver Spur) prevailed in its petition for a discretionary hardship rent increase at its mobilehome park. In a previous appeal, Nos. E023514 and E024376, this court reversed an attorney fees award in favor of Silver Spur and remanded the matter for reconsideration in accordance with the new standards announced in Galland v. City of Clovis (2001) 24 Cal. 4th 1003 (Galland).

On remand, the trial court denied the attorney fees request. Silver Spur appeals from that decision.

FACTS AND PROCEDURAL BACKGROUND

On September 1, 1993, Silver Spur applied for a discretionary hardship rent increase under the Palm Desert

Mobile Home Park Review Ordinance. In the previous appeal, we noted: "Section 9.50.060 of the ordinance states the maximum rent that may be charged for a mobilehome space, subject to the hardship situations. The guidelines implementing the ordinance provide that increases will be allowed to permit rent to be established at a level which will provide landlords with a fair return on their property consistent with the Palm Desert Mobile Home Park Rent Ordinance, and the laws of the State of California." This provision is consistent with well-established law. (See, e.g., Birkenfeld v. City of Berkeley (1976) 17 Cal. 3d 129, 165; Cotati Alliance for Better Housing v. City of Cotati (1983) 148 Cal. App. 3d 280.[1])"

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[1] "Constitutionally valid rent control schemes must allow park owners to earn a 'just and reasonable' or 'fair' return on their investment. [Citations.] The term 'fair and reasonable' is incapable of precise definition [citation], but is generally considered to include returns that are 'commensurate with returns on investments in other enterprises having corresponding risks' [citation], or high enough to encourage good management, reward efficiency, discourage the flight of capital, and enable operators to maintain their credit.' [Citation.] (Donahoe v. Santa Paula West Mobilehome Park (1996) 47 Cal. App. 4th 1168, 1177.

Our previous opinion continued:

"Silver Spur's application sought a discretionary hardship of at least $64 per space per month. The application asserts that this sum is necessary to provide it with the required fair return on its investment. The application also alleges that the mobilehome park was purchased in 1977, that Silver Spur had made substantial investments in infrastructure and amenities since then, but that there had been no corresponding increase in rental rates.[2] The residents of the mobilehome park were notified of the application and, predictably, opposed it.

"An amended application was filed and heard for four days, beginning on February 4, 1994. Silver Spur presented and relied primarily on the testimony and reports of Gerald Taylor, an appraiser, and Richard Fabricant, an economic

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[2] There was, however, a 1988 settlement agreement between Silver Spur and tenants. The agreement provided certain specified rent increases. It expired in April 1993, and it did not restrict rent increases after that time. We considered certain aspects of the settlement agreement and related issues in Silver Spur Homeowner's Association v. Silver Spur Reserve (E020988), an unpublished opinion filed on November 13, 1998.

consultant, to support its claims. Mr. Fabricant testified that a fair rate of return on the property would equate to a monthly per space rental increase of approximately $62. His report states that a $62 per space per month increase is necessary to provide Silver Spur with a 12.7 percent rate of return on its investment, based on historical data.

"Counsel for the tenants vigorously opposed the request and called his own witnesses. The hearing concluded on March 30, 1994. The hearing officer filed a 24 page decision which concluded that Silver Spur had failed to prove that it was entitled to a hardship rent increase."

Silver Spur filed an appeal on June 28, 1994, to the Rent Review Board, disagreeing primarily with the hearing officer's treatment of the debt service expense-the hearing officer had declined to deduct the debt service expense from gross income based on the hearing officer's conclusion that the debt service arose from refinancing the mobilehome park for $4.3 million, and the proceeds of the refinancing had not been used to benefit the property.

The Rent Review Board conducted a hearing on

December 2, 1994, at which the board considered and rejected Silver Spur's position on the appropriate treatment of the debt service expense. For example, one member of the board stated, "[The mobilehome park owner's] investment in that property now, as far as I can see from a commonsensical approach, is 3.2 million because he pocketed the 4.3. He took out of that investment 4.3 million. So now what is his rate of return on the remaining equity of 3.2? It appears that that is a sufficient amount. I mean you would concede that 576,000 [the net operating income when the debt service expense was disregarded] is a fair rate of return if you consider the 3.2 million as the investment, wouldn't you? Another board member framed the issue, based on his understanding of the controlling authorities, as what would be a "net return on investment, not on market value and not on equity," and therefore the important determination was not the current market value of the property or the amount taken out in the refinancing of the property, but the owner's initial investment in the property. The discussion again focused on what the owner's initial investment has been and what the $4.3 million

in proceeds from the refinancing had been used for.

The attorney representing the mobilehome park residents stated that because the $4.3 million had been used for personal purposes, it would be unfair to the park residents to burden them with the debt service for the refinancing: "My position is that just like any other businessman who finances their personal loan, he has an obligation to pay it back. Well, he's got $576,00. That's what he's using-you know, he can pay it back out of the profits of the park. But that's no reason to burden the park residents to pay off a loan that is being used for his personal purposes . . . Plus he's getting a return on that money somewhere else, obviously."

In contrast, counsel for Silver Spur argued strenuously that the board should apply an inflation adjusted method, based on the original purchase price and original cost of capital improvements, adjusted for inflation since the date of each expenditure, leading to a value for the mobilehome park of $6.8 million, and the fair return should be based on that figure. Ultimately, the Rent Review Board rejected Silver

Spur's arguments, adopted the hearing officer's finding, and ruled that the evidence did not support any rent increase. Silver Spur requested reconsideration of that decision. The board denied the request.

Silver Spur filed a petition for a writ of administrative mandamus in the Riverside County Superior Court on February 24, 1995, on the ground that the City's decision had deprived it of a fair return on investment in violation of its constitutional rights. In its trial brief, Silver Spur again argued that the hearing officer had erred by failing to deduct the debt service expense from gross profits.

In the City's trial brief, the City's attorney, who has also represented the City in the administrative proceedings, argued that the hearing officer had applied an "historic cost" analysis in rejecting Silver Spur's rent increase application, although the hearing officer had not articulated any such analysis, and no evidence had been offered in support of such an analysis. Silver Spur objected to this line of argument. After conducting a hearing on the writ petition on November 15, 1996, the trial court remanded the matter to the Rent

Review Board for further findings "regarding the evidence the Board relied on in calculating the parkowners' investment in the property, the parkowners' return on investment and the formula, if any, the Board used in determining whether the parkowners' rate of return was fair." The trial court, at the hearing on November 15 and in its written order on February 20, 1997, ruled that the Rent Review Board could not consider any new information on remand, but the Rent Review Board was to "base their decision on strictly the administrative record," and neither the Rent Review Board nor the hearing officer was to consult with the attorney for the City before rendering their decision on remand.

The Rent Review Board held a study session on April 3, 1997, for the purpose of preparing for the April 9 hearing on remand. The deputy city attorney informed the board that the purpose of the remand was "for this body to render findings which would bridge the gap between the evidence, adduced by your hearing officer, and the ultimate conclusion that was reached to deny the petition for the discretionary rent increase." The deputy city attorney further informed the

board that neither the board nor the hearing officer was to adduce new evidence, but they were to base their decision solely on the existing administrative record. The hearing office revealed, however, that he had seen a copy of the transcript of the superior court ruling, despite the trial court's order. Counsel for Silver Spur objected strenuously to the use of the court transcript or trial briefs in proceedings. At the hearing on April 9, the board remanded the matter to the hearing officer for further findings.

On May 6, 1997, the hearing officer issued a supplemental decision in which he again recommended a finding that the evidence was insufficient to justify any rent increase. On May 15, 1997, the Rent Review Board conducted a hearing to review the hearing officer's amended decision, after which the board affirmed the hearing officer's amended decision.

Silver Spur filed a motion for writ of mandate in the superior court on September 26, 1997, and also moved to hold the board and its attorneys in contempt for violation of the trial court's earlier order restricting the use of the transcript of

the November 15 hearing. At the hearing on the motions, Silver Spur withdrew its motion for contempt. The trial court entered judgment overturning the previous decisions of the hearing officer and the Rent Review Board and finding that a rent increase of $58.33 was required to provide Silver Spur with a fair return on investment.

On July 13, 1998, the Rent Review Board conducted a hearing at which only two of the three board members present voted to comply with the trial court's ruling; a vote of at least three members was required to take action on the matter. A second hearing was held on July 17, 1998, at which the board voted to allow Silver Spur to raise rents by $58.33 per space per month in accordance with the trial court's order.

On November 12, 1998, Silver Spur filed a motion in the trial court for attorney fees, and the court awarded Silver Spur attorney fees in the amount of $85,501 based on the City of Palm Desert's (City's) violation of Silver Spur's constitutional right to a fair return. The City appealed the award to this court, and we remanded for further

consideration of the attorney fees award under the standards of Galland.

On remand, the court denied the request for attorney fees. The court explained: "After reviewing the pertinent documents, receiving oral argument, and reviewing the applicable law, the court now denies the Plaintiff's motion for said attorney's fees. Although many authorities were cited, the leading California case on the subject is Galland v. City of Clovis, 24 Cal. 4th 1003 . . . In that case the court observed that "The cognizable level of executive abuse of power is that which shocks the conscience. The mere finding that a government decision is arbitrary or capricious is not sufficient to establish a due process violation. Only a substantial infringement of state law prompted by person or group animus, or a deliberate flouting of the law that trammels significant personal or property rights qualifies for federal civil rights relief under 28[sic] U.S.C., 'Section 1983'. Even though the City's conduct may have been arbitrary, negligent or bureaucratic, there was no evidence presented to the court that such conduct, however distasteful, was outrageous or

egregious. Thus, the standard established by Galland was [not] met."

DISCUSSION

I. STANDARD OF REVIEW

The right to recover attorney fees in this case arises under 42 United States Code Section 1988(b), which provides: "In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. Section 1681 et seq.], . . . the court in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of costs,. . . . " We review the trial court's determination of entitlement to attorney fees under 42 United States Code sections 1983 and 1988 for abuse of discretion. (McFadden v. Villa (2001) 93 Cal. App. 4th 235,237.)

Silver Spur, however, contends that the decision to award or deny fees is reviewed de novo. Although Silver Spur is correct that the determination of the legal basis of an award of fees is a question of law, reviewed de novo (Carver v Chevron U.S.A., Inc. (2002) 97 Cal. App. 4th 132, 142), that

test applies only to the determination whether, in the particular case, a contract or statute allows an award of attorney fees. In the previous appeal, this court held that a legal basis existed for an award of attorneys fees if the standards set forth in Galland are met. However, we assess the trial court's application of those standards under the abuse of discretion test. The fact that the judge who ruled on the matter on remand was not the same judge who awarded attorney fees under the pre-Galland standards does not alter our standard of review.

The Galland Test

In Galland, the Plaintiff mobilehome park owners claimed damages from the Defendant city's Mobile Home Rent Review Commission for inverse condemnation, denial of substantive and procedural due process, and civil rights violations under 42 United States Code section 1983. The trial court awarded damages, and the appellate court affirmed. On review, however, the Supreme Court reversed and remanded for further assessment of the issue. The court noted that the Plaintiffs had brought "two distinct due

process claims under section 1983, corresponding to two different types of economic injury." The court explained that the first type of injury stemmed from the city's failure to fully grant the requested rent increases, resulting in confiscatorily low rents." (Galland, supra, 24 Cal. 4th at p. 1020). With respect to these damages, the court held that a Kavanau[3] adjustment would preclude section 1983 damages "if it is adequate to prevent constitutional injury by compensating for previous excessively low rent ceilings." (Galland, at p. 1008). The court thus remanded the matter for determination of a Kavanau adjustment. (Galland, at pp. 1008-1009.)

The court noted that the second type of injury was a substantive due process claim arising from the administrative and legal expenses incurred as a result of the arbitrary proceedings. The court framed the question as "whether [the

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[3] In Kavanau v. Santa Monica Rent Control Board (1997) 16 Cal. 4th 761, the Supreme Court held that under rent control, "adjustment of future rents was generally sufficient to compensate for prior rent ceilings that were set so low as to be confiscatory, and that such adjustments precluded a claim for inverse condemnation." (Galland, supra, 24 Cal. 4th at p. 1008).

city's] actions during the rent adjustment hearings of 1988 to 1990, independent of the outcome of those hearings . . . , violated the [Plaintiffs'] substantive due process rights." (Galland, supra, 24 Cal. 4th at p. 1030). The court held that a mere finding that a government decision was arbitrary or capricious was not sufficient to establish a substantive due process violation; rather, ". . . .[o]nly a substantial infringement of state law prompted by personal or group animus, or *a deliberate flouting of the law that trammels significant personal or property rights*, qualifies for relief under section 1983 . . . Inadvertent errors, honest mistakes, agency confusion, even negligence in the performance of official duties, do not warrant redress under this statute." (Galland, supra, at p. 1034, quoting Silverman v. Berry (D.C. Cir. 1988) 845 F. 2d 1072, 1080. The court therefore remanded the matter for consideration under this new test for gauging constitutional injury. The court noted that "even if [the city's] actions do not rise to a deliberate flouting of the law, the [Plaintiffs] are not necessarily without a remedy," referring to an appropriate Kavanau adjustment. (Galland, at p. 1040).

The Law of the Case Doctrine Does Not Apply

In the previous appeal, the trial court denied the Plaintiff's request for attorney fees under Government Code Section 800. That section allows recovery of attorney fees up to $7,500 when the court finds that certain actions by government entities are arbitrary and capricious. We stated that "[t]he trial court did not abuse its discretion in declining to award attorneys fees under this section, and. . . .'An erroneous interpretation of the law does not suggest per se that the action of the public entity or an officer thereof was arbitrary or capricious." [Citations.]" We therefore stated that the trial court did not abuse its discretion in failing to award attorney fees under Government Code section 800. The City argues that this holding is law of the case, and the prior trial court finding that the City had not acted arbitrarily and capriciously precludes an award of attorney fees under Galland, which required that governmental action be more than arbitrary and capricious.

The "law of the case" doctrine precludes a party from obtaining appellate review of the same issue more than once

in a single action. "When a reviewing court 'states in its opinion a principle or rule of law necessary to the decision, that principle or rule of law becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal, ...[Citations.] In order for the doctrine to apply, "'the point of law involved must have been necessary to the prior decision [and] the matter must have been actually presented and determined by the court, . . . '" [Citations.]' [Citation.]" (Katz v. Los Gatos-Saratoga Joint Union High School Dist. (2004) 117 Cal. App. 4th 47, 62.)

Here, although Silver Spur requested attorney fees under both 42 United States Code section 1988 and Government Code section 800, the trial court's order mentioned only the former statute: "The Petitioner is the prevailing party in this action, having established a violation of its constitutional right to a fair return on investment . . . The Petitioner is also entitled to recover its attorneys fees in the sum of $85,501, pursuant to 42 U.S.C. Section 1988." The sum awarded, $85,501, was the amount requested in Silver

Spur's memorandum of costs. The trial court having awarded the entire sum requested under section 1988, the trial court was not required to reach Silver Spur's entitlement to attorney's fees under Government Code Section 800, and, as noted, the trial court's order does not even mention Government Code section 800. We thus conclude that the discussion of Government Code section 800 was not necessary to our holding in the prior appeal and was therefore dicta. Indeed, as the City points out, an express finding that the City was not arbitrary and capricious during the proceedings would have precluded an award of fees under the Galland standard, which requires a showing even greater than merely arbitrary and capricious actions, and would have made our remand for consideration of the Galland standard an idle act. Thus, the law of the case doctrine does not apply.

II. Compliance with Trial Court Orders

Silver Spur argues a number of different actions taken during the course of the administrative proceedings show that the Galland standard was met.

Silver Spur first argues that the City failed to comply with court orders.

In the first writ proceedings in the Riverside County Superior Court, the attorney for the City raised an argument, over Silver Spur's objection, about the "historic cost" approach that was never raised during the administrative proceedings. Silver Spur argues that when the court prohibited the hearing officer and the Rent Review Board from being apprised of this new argument, the City violated that order. Even accepting, for purposes of argument, that the City violated the trial court's order by providing the hearing officer with a copy of the transcript of the November 15 court hearing, we perceive no prejudice to Silver Spur from that violation. The court's purpose in restricting use of the transcript was to limit the board to the same administrative record on remand and to prevent the board from coming up with an after the fact justification for its earlier decision by applying a theory, the historical cost approach, that had not been previously raised or relied on. Our review of the record does not show that the hearing officer or the board applied

the historical cost approach in the proceedings on remand. Thus, even if the court order was violated, that violation does not establish any prejudice to Silver Spur.

Silver Spur also argues that the City should not have raised the "historic cost" method at the hearing in the trial court. However, making an unsuccessful argument does not amount to a deliberate flouting of the law, nor does an erroneous interpretation of the law suggest an argument was arbitrary or capricious. (See Indian Springs, Ltd. v. Palm Desert Rent Review Board. (1987) 193 Cal. App. 3d 127, 137.)

Silver Spur argues that the Rent Review Board discussed ways of avoiding the court's award of a rent increase to Silver Spur and discussed amending the ordinance to avoid a similar result in other cases. The fact remains that the Board did vote to comply with the trial court's order, even if the board discussed alternatives. Moreover, an administrative body's discussion of the alternatives available to it falls far short of meeting the Galland standard.

III. A Fair Hearing Before a Fair Tribunal

Silver Spur argues that it was denied a fair hearing

before a fair tribunal. Silver Spur states that one member of the board voted against a rent increase even though he had not reviewed the record. Silver Spur has failed to cite any authority supporting its argument. Moreover, the vote took place after a lengthy debate and presentation. Silver Spur also points out that that same board member who had not read the record "threatened to [meet] Silver Spur's attorney, presumably because he wanted to fight or argue over the matter, . . . " This incident occurred at the board hearing on July 13, 1998, at which no conclusive action was taken. The same board member was not present at the hearing on July 17, at which the board voted to comply with the trial court's order awarding Silver Spur a rent increase. This incident is insufficient to meet the standards required under Galland.

Silver Spur further notes that the hearing officer was handpicked by the City with no input by the parkowners. The record does not show, however, that Silver Spur objected to the hearing officer, and we thus deem any objection waived for purposes of appeal. (See Baxter Healthcare Corp. v. Denton (2004) 120 Cal. App. 4th 333, 371 fn. 8 (Baxter)

["points not urged in the trial court will not be considered for the first time on appeal."].

Silver Spur further notes that the same lawyer acted as attorney for the Rent Review Board and for the City in the same proceeding and contends that this was improper. This argument was not presented in the trial court, and we decline to address it for the first time on appeal. (Baxter, supra, 120 Cal. App. 4th at p. 371 fn. 8.)

Silver Spur argues that the hearing officer and the Rent Review Board arbitrarily refused to accept uncontradicted and unimpeached expert testimony concerning the rates of return on investment--Dr. Fabricant testified that $736,741 was the minimum net operating income required to provide a fair return, and the City produced no evidence to rebut that testimony. Silver Spur contends the hearing officer erroneously concluded that Silver Spur had an annual profit of $1,000,000, based on the hearing officer's erroneous treatment of Silver Spur's debt service, and Silver Spur further contends that the hearing officer and the board consistently failed to correct that mathematical

error, despite having the error pointed out to them repeatedly. Silver Spur argues that this is evidence that the City was deliberately attempting to prevent Silver Spur from receiving a fair return.

Our own review of the record shows that rather than merely making and repeating a mathematical error, the hearing officer and the board were attempting to interpret controlling authorities concerning return on investment and to apply those authorities to the evidence in the record. The fact that the hearing officer and the board reached a different conclusion as to the application of those authorities does not suffice to meet the Galland standard.

V. Findings of Fact

Silver Spur argues that the City failed to provide findings of fact to support its denial of a rent increase. This argument was not raised in the trial court, and we decline to address it for the first time on appeal. (Baxter, supra, 120 Cal. App. 4th at p. 371 fn. 8.)

VI. Opportunity to Rebut Presumption

Silver Spur argues that the City failed to allow Silver

Spur to rebut a presumption in the rent control ordinance. The rent control ordinance contains a presumption that adjusting base year profits for 50 percent of the increase in the inflation rate will result in a fair return in future years. The maximum amount of net operating income allowed under this presumption was $394,908, although Dr. Fabricant testified that $736,741 was the minimum amount required to produce a fair return. Silver Spur argues that the City failed to allow it to rebut this presumption, and the hearing officer and the board continued to rely on the presumption in spite of Dr. Fabricant's uncontradicted testimony. The argument is simply another rephrasing of Silver Spur's argument that the hearing officer and the board refused to correct a mathematical error, which, as discussed above, we have found to be meritless.

VII. Denial of Fair Return

Silver Spur argues that the City's actions denied it a fair return in violation of its constitutional rights. Under Galland, Silver Spur's remedy is to seek a Kavanau adjustment. (Galland, supra, 24 Cal. 4th at p. 1008.)

VIII. Motivation for City's Actions

In a form of cumulative error analysis, Silver Spur contends that the City's actions, set forth above, could not be explained as the result of "bureaucratic bumbling," but were rather the deliberate actions of sophisticated and educated professionals, and "ample circumstantial evidence in the record" shows that the City's actions were not the result of innocent errors or honest mistakes. Thus, Silver Spur argues, the City's actions collectively demonstrate that the City had an overall strategy to obstruct the rent increase application.

We reject this argument. The administrative record was voluminous. The transcripts of the various hearings reflect that the board considered the arguments of Silver Spur's counsel regarding the treatment of the debt service expense. The fact that the board disagreed with Silver Spur's position on that issue falls far short of establishing animus toward Silver Spur. Rather, the record reflects genuine disagreement about what factors should be considered in determining a fair return on investment. We find no abuse of discretion in the trial court's rejection of Silver Spur's request

for attorney fees.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ Hollenhorst
Acting P.J.

J.

We concur:

/s/ Richli
J.

/s/ Ward
J.

Douglas S. Phillips, Bar No. 074906
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Attorneys for Respondent THE CITY OF PALM DESERT

FILED
NOV. 14
2004

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

SILVER SPUR RESERVE, a California General Partnership, dba Silver Spur Mobile Manor,

Petitioner,

v.

THE CITY OF PALM DESERT, THE PALM, et. al.,

Respondents,

The Tenants Residing at Silver Spur Mobilehome Park, George Gutierrez, Catherine Britt, et. al.

Real Parties in Interest.

Case No. RIC 390013 (formerly INC 080790)

ORDER DENYING PETITIONER'S MOTION FOR ATTORNEY'S FEES

Hearing Date: August 18, 2003
Time: 10:30 a.m.
Dept: 35

Judge: Robert S. Drake

The motion of Petitioner, SILVER SPUR RESERVE dba SILVER SPUR MOBILE MANOR, for attorney's fees, came on regularly for hearing by the Court on August 18, 2003. Petitioner appeared by counsel, Anthony Rodriguez. Respondent appeared by counsel, Douglas S. Phillips of Best, Best & Kreiger. Real parties in interest did not appear.

The Court being fully advised in the premises, and good cause appearing therefore:

IT IS ORDERED that the motion of Petitioner, SILVER SPUR RESERVE dba SILVER SPUR MOBILE MANOR, for attorney's fees, filed June 14, 2002, is hereby denied.

Dated: 11-14, 2004

_____

Robert S. Drake,
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
Minute Order/Judgment

Case No.: 390013
Case Name: SILVER SPUR RESERVE VS CITY OF PALM DESERT
Case Category: Writ of Mandate (Mandamus)
Hearing" Court's subsequent Ruling Re: matter submitted on 8-18-03 made on 10/07/03 @ 8:00 for Department 35

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Honorable ROBERT S. DRAKE, Presiding

Clerk: M. Perez

Reporter: None

Court Subsequently Rules:

This matter came on for a hearing on August 18, 2003 in the Riverside Superior Court. The only issue was whether the conduct of the City of Palm Desert in denying Silver Spur's request for a rent increase justified an award of attorney's fees pursuant to 28 [sic] U.S.C. Section 1983.

After reviewing the pertinent documents, receiving oral argument, and reviewing the applicable law, the court now denies the Plaintiff's motion for said attorney's fees. Although many authorities were cited, the leading California case on the subject is Galland v. City of Clovis, 24 Cal. 4th 1003; 103 Cal. Rptr. 711. In that case the court observed that "The cognizable level of executive abuse of power is that which shocks the conscience. The mere finding that a government decision is arbitrary or capricious is not sufficient to establish a due process violation. Only a substantial infringement of state law prompted by person [sic] or group animus, or a deliberate flouting of the law that trammels

significant personal or property rights qualifies for federal civil rights relief under 28 [sic] U.S.C., "Section 1983". Even though the City's conduct may have been arbitrary, negligent or bureaucratic, there was no evidence presented to the court that such conduct, however distasteful, was outrageous or egregious. Thus, the standard established by Galland was met.

Notice to be given by the clerk.

Clerk's certificate of Mailing re: minute order

Notice sent to ANTHONY C. RODRIGUEZ on 10/07/03

Notice sent to BEST, BEST & KREIGER on 10/07/03